

Fatoumata Binta Diallo
1340 Merriam Avenue - A23
The Bronx, NY 10452

RECEIVED
SDNY PRO SE OFFICE
2024 DEC 20 AM 10:23

December 17, 2024

The Honorable McCarthy Seibel
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Apology for Failing to Respond to Motion Regarding Amended Complaint
Case No. 24 cv 2771 (CS)

Dear Judge McCarthy Seibel,

I am writing to respectfully address a matter regarding my case, and to offer my sincere apologies for my failure to respond to the motion related to the amended complaint.

Due to significant personal and logistical difficulties, I was unable to engage with legal counsel in a timely manner. I was only able to meet with a legal aid representative on December 13, 2024. As a result, I was not in a position to respond to the motion as required.

I understand the importance of adhering to deadlines and fulfilling all obligations in a legal proceeding, and I deeply regret any inconvenience this may have caused the Court. I assure you that this oversight was not intentional, and I am now fully engaged in the legal process with the assistance of my legal aid. I am committed to ensuring that all future filings and responses are made in a timely and thorough manner.

I respectfully request the Court's understanding and any guidance on how to proceed in light of this situation. If there is any action I need to take to remedy this oversight, I am more than willing to comply.

Thank you for your time and consideration.

Sincerely,

Fatoumata Binta Diallo



Plaintiff's Amended Complaint was due almost two months ago. When she did not file one, Defendant properly moved to dismiss the original Complaint. Now that Defendant has spent its time and money on that motion, Plaintiff is apparently asking to amend belatedly. If Plaintiff needed more time for her Amended Complaint because of her personal circumstances, it was her obligation to so notify the Court and ask for an extension, so that Defendant would not waste its resources moving to dismiss a Complaint that was going to be amended. On the other hand, the Second Circuit has indicated that courts are to be lenient with pro se litigants, and if I were to grant the motion to dismiss the original Complaint, I would likely have to let Plaintiff amend at that time. Accordingly, although it is not really fair to Defendant, I will accept the Amended Complaint attached to this letter. Defendant may file a new motion to dismiss no later than 1/27/25. Plaintiff's opposition will be due no later than 2/26/25. Defendant's reply will be due no later than 3/12/25. The pending motion to dismiss is denied as moot, and the Clerk of Court is respectfully directed to terminate ECF No. 27. I am taking Plaintiff at her word that she is now prepared to adhere to deadlines.

SO ORDERED.


CATHY SEIBEL, U.S.D.J.

12/26/24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Fatoumata Binta Diallo

Write the full name of each plaintiff.

-against-

Unlimited Care Inc

Write the full name of each defendant. The names listed above must be identical to those contained in Section I.

7.24 CV 0771 CS

(Include case number if one has been assigned)

Do you want a jury trial?

☒ Yes ☐ No

FIRST AMENDED
COMPLAINT

EMPLOYMENT DISCRIMINATION COMPLAINT

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 24cv2771

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

I. PARTIES**A. Plaintiff Information**

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

Fatoumata	Binta	DIALLO
First Name	Middle Initial	Last Name
1340 Merriam Avenue - #A23		
Street Address		
Bronx	New York	10452
County, City	State	Zip Code
646-3222914	nbbinta3@gmail.com	
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. (Proper defendants under employment discrimination statutes are usually employers, labor organizations, or employment agencies.) Attach additional pages if needed.

Defendant 1: **UNLIMITED CARE INC**

Name		
733 YONKERS Avenue STE LL1		
Address where defendant may be served		
YONKERS	NY	10704
County, City	State	Zip Code

Defendant 2:

Name		
Address where defendant may be served		
County, City	State	Zip Code

Defendant 3:

Name

Address where defendant may be served

County, City

State

Zip Code

II. PLACE OF EMPLOYMENT

The address at which I was employed or sought employment by the defendant(s) is:

UNLIMITED CARE INC

Name

1340 merriam avenue-#A23

Address

YONKERS

NEW YORK

10452

County, City

State

Zip Code

III. CAUSE OF ACTION

A. Federal Claims

This employment discrimination lawsuit is brought under (check only the options below that apply in your case):

- ☐ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, for employment discrimination on the basis of race, color, religion, sex, or national origin

The defendant discriminated against me because of my (check only those that apply and explain):

☐ race:

☐ color:

☐ religion:

☒ sex:

PREGNANCY

☐ national origin:

- ☐ **42 U.S.C. § 1981**, for intentional employment discrimination on the basis of race

My race is: _____

- ☐ **Age Discrimination in Employment Act of 1967**, 29 U.S.C. §§ 621 to 634, for employment discrimination on the basis of age (40 or older)

I was born in the year: _____

- ☐ **Rehabilitation Act of 1973**, 29 U.S.C. §§ 701 to 796, for employment discrimination on the basis of a disability by an employer that constitutes a program or activity receiving federal financial assistance

My disability or perceived disability is: _____

- ☐ **Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12101 to 12213, for employment discrimination on the basis of a disability

My disability or perceived disability is: _____

- ☐ **Family and Medical Leave Act of 1993**, 29 U.S.C. §§ 2601 to 2654, for employment discrimination on the basis of leave for qualified medical or family reasons

B. Other Claims

In addition to my federal claims listed above, I assert claims under:

- ☐ **New York State Human Rights Law**, N.Y. Exec. Law §§ 290 to 297, for employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status
- ☐ **New York City Human Rights Law**, N.Y. City Admin. Code §§ 8-101 to 131, for employment discrimination on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status
- ☐ Other (may include other relevant federal, state, city, or county law): _____

IV. STATEMENT OF CLAIM

A. Adverse Employment Action

The defendant or defendants in this case took the following adverse employment actions against me (check only those that apply):

- ☐ did not hire me
- ☐ terminated my employment
- ☐ did not promote me
- ☒ did not accommodate my disability
- ☒ provided me with terms and conditions of employment different from those of similar employees
- ☒ retaliated against me
- ☐ harassed me or created a hostile work environment
- ☐ other (specify): _____

B. Facts

State here the facts that support your claim. Attach additional pages if needed. You should explain what actions defendants took (or failed to take) *because of* your protected characteristic, such as your race, disability, age, or religion. Include times and locations, if possible. State whether defendants are continuing to commit these acts against you.

My leave was directly linked to pregnancy via IVF, mutually agreed upon, with continuous communication to Unlimited Care, Inc, my employer. The employer misrepresented available work hours offered, once back to work, assigning incompatible shifts despite prior commitments and pregnancy status, a departure from past practices, much more favorable. Selective assignment of "fill-in" positions, notably with longstanding patients, undermines my rights as a pregnant employee seeking reasonable accommodations, without substantiated reasons for patient withdrawal. That has never been the case for the past seven years I worked for the employer, when I was not pregnant. Moreover, during an employment hearing, the employer admitted to pregnancy-induced schedule changes leading to subtle termination of longstanding cases, indicating discriminatory practices; and in order to avoid legal consequences, the employer put on a tactic of constructive discharge and quiet firing.

As additional support for your claim, you may attach any charge of discrimination that you filed with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission on Human Rights, or any other government agency.

V. ADMINISTRATIVE PROCEDURES

For most claims under the federal employment discrimination statutes, before filing a lawsuit, you must first file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) and receive a Notice of Right to Sue.

Did you file a charge of discrimination against the defendant(s) with the EEOC or any other government agency?

- ☒ Yes (Please attach a copy of the charge to this complaint.)

When did you file your charge? 04/14/2023

- ☐ No

Have you received a Notice of Right to Sue from the EEOC?

- ☒ Yes (Please attach a copy of the Notice of Right to Sue.)

What is the date on the Notice? 03/25/2024

When did you receive the Notice? 03/25/2024

- ☐ No

VI. RELIEF

The relief I want the court to order is (check only those that apply):

- ☐ direct the defendant to hire me
- ☐ direct the defendant to re-employ me
- ☐ direct the defendant to promote me
- ☐ direct the defendant to reasonably accommodate my religion
- ☐ direct the defendant to reasonably accommodate my disability
- ☒ direct the defendant to (specify) (if you believe you are entitled to money damages, explain that here)

Pay money damage for lost of wage and the emotional distress caused by removing my job secur and all those steps I have to take in order to restore my rights.

VII. PLAINTIFF'S CERTIFICATION

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

04/01/2024		<u><i>Fatoumata Binta Diallo</i></u>
Dated		Plaintiff's Signature
Fatoumata	Binta	Diallo
First Name	Middle Initial	Last Name
1340 Merriam avenue- #A23		
Street Address		
Bronx	New York	10452
County, City	State	Zip Code
646 3222914	nbbinta3@gmail.com	
Telephone Number	Email Address (if available)	

I have read the attached Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☒ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

Additional Information

Summary of Arguments into context, with more details:

. IVF-Pregnancy-related Leave: Despite mutual agreement and awareness of my pregnancy via IVF, the employer failed to accommodate my emotional and physical needs, treating me differently upon return to work, compared to my other colleagues.

My Pregnancy-related Leave was due to my employer demanding a Doctor's clearance note mentioning specifically that I can work "without any restriction". Because of the IVF procedure, in order to be on the safe side, my Doctor and I agreed that I should take a rest, though I wanted to work. However, once cleared by my Doctor to return to work, I realized and noticed that my employer was not that enthusiastic and welcoming for me to get back to my regular schedule, that I fulfilled for years.

. Misrepresentation of Work Hours: The employer misrepresented my work hours, falsely presenting 34-hour work weeks before and after leave, disregarding my alternating regular schedule of 46 and 34 hours. This intentional deception suggests a tactic of constructive discharge.

. Temporary Assignments: Offering only temporary "fill-in" positions, including my longstanding cases, indicates a subtle removal of job security and an absence of permanent or equivalent assignments, I had before my time off. Though the employer sent me a letter stating that I will keep my position, the same assignments before my time off (evidence #1, herein).

. Contradictory Statements: Discrepancies between the employer's claim of offering permanent positions and the presented evidence of temporary assignments undermine their credibility, and good faith.

. Lack of Accommodation: The employer's hostile encounter over the phone since my pregnancy has been confirmed, and lack of compassion led to a breach of communication, as well as a potential hostile work environment that I could not take emotionally, as a pregnant woman.

. Acknowledgment of Pregnancy Impact: During a job hearing, the employer admitted making schedule changes due to my pregnancy, hinting at a motive to discharge me subtly, because they did remove my two patients and gave me "fill-in" positions only, that is much less favorable from me than before my leave.

Overall, these facts and circumstantial evidence suggest the employer utilized tactics of constructive discharge and quiet firing to evade legal accountability for pregnancy discrimination, and trying to shift the blame onto me, the employer confident, playing smart by pretending offering me work hours that they knew I would not be able to fulfill.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall St, 5th Floor
New York, NY 10004
(929) 506-5270
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

Issued On: 03/25/2024

To: Mrs. Fatoumata B. Diallo
1340 Merriam Avenue #A23
BRONX, NY 10452

Charge No: 520-2023-05760

EEOC Representative and email: ANDREA MACANCELA
Investigator
andrea.macancela@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission,

Digitally Signed By: Yaw Gyebi, Jr.
03/25/2024

Yaw Gyebi, Jr.
District Director

Cc:

Hillary A Fraenkel
Eustace, Prezioso & Yapchanyk
55 WATER ST FL 28
New York, NY 10041

Judith Wright
Unlimited Care, Inc.
707 Westchester Avenue, Suite 110
White Plains, NY 10604

Please retain this notice for your records.

Subject Case closure 520-2023-05760, Fatoumata Diallo v. Unlimited Care Inc RE: EEOC Number: 520-202305760

From ANDREA MACANCELA
<ANDREA.MACANCELA@EEOC.GOV>

To: nbbinta3@gmail.com <nbbinta3@gmail.com>

Date Mar 25 at 4:11 PM

Good Afternoon Ms. Diallo,

Thank you for speaking with the Commission earlier this afternoon. The Commission informed you about closing the investigation regarding to your charge 520-2023-05760, against Unlimited Care Inc.

To prove prima facie under Title VII:

1. You are a member of a protected group;
2. You were performing at satisfactory level;
3. You were discharge or otherwise disciplined; or
4. Other factors indicate you were treated differently because you were in a protected group

To prove prima facie under ADA:

1. You have a disability (a physical or mental impairment that substantially limits one or more major life activities)
2. You notified Respondent of your disability and need for reasonable accommodation;
3. There was a reasonable accommodation that would allow you to participate in the application process to perform the essential functions of your job; and
4. Respondent failed to provide an effective accommodation that was available

You do not meet two out of the four prongs listed above. The respondent gave you several opportunities to return back to work and provided you with shifts. The respondent did not change your title or position, rather you believed that you had a right to see the patients you were taking care of prior to your leave. In the respondent's employee handbook it outlines that the hours of work are not guaranteed on a weekly basis, but rather based on a patients needs. You do not meet two of these ADA prongs. You did not provide documentation regarding your reasonable accommodation request that would allow you to perform the essential functions of your job.

For these reasons, the Commission cannot continue with the investigation. We have closed out your charge of discrimination. Should you wish to continue with your case in federal court, you are entitled to file your charge within 90 days in federal court. The Commission has attached the

90 days in federal court. The Commission has attached the document for you to use as a reference to file a charge in federal court.

Kind regards,

Andrea Macancela
EEOC Investigator
33 Whitehall Street
New York, NY 10004

From: nbbinta3@gmail.com <nbbinta3@gmail.com>
Sent: Friday, March 22, 2024 10:37 AM
To: ANDREA MACANCELA
<ANDREA.MACANCELA@EEOC.GOV>
Subject: Re: EEOC Number: 520-202305760

Greetings!
I Fatoumata B Diallo would like to know the status of my case. Thank you.

Sent from Yahoo Mail for iPhone

On Friday, October 27, 2023, 5:23 PM,
nbbinta3@gmail.com wrote:

Thanks for the heads up.

Sent from Yahoo Mail for iPhone

On Friday, October 27, 2023, 4:09 PM, ANDREA
MACANCELA <ANDREA.MACANCELA@EEOC.GOV>
wrote:

Good Afternoon,

Thank you for your email. As stated on our website, how long the investigation takes depends on many factors, including the amount of information that needs to be gathered and analyzed. On average, we take approximately 10 months to investigate a

charge. We are often able to settle a charge faster through mediation (usually in less than 3 months). You can check the status of your charge by using EEOC's Online Charge Status System.

Unlimited Care, Inc.

HEALTH CARE SERVICES 707 Westchester Avenue Suite 110

White Plains, NY 10604 Tel (914) 428-4300

October 31, 2022

Fatoumata Diallo
340 Merrian Ave
Apt A23
Bronx, NY 10452

Dear Fatoumata:

On 10/28/2022 we became aware that you may need time off from work under circumstances that may qualify for leave under the Family and Medical leave Act (FMLA). The purpose of this letter is to provide you with the information and the forms both you and your health care provider need to complete and return to us.

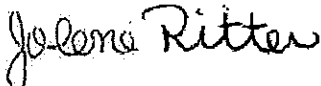
Under the FMLA, Employees who have been with the organization for at least 12 months and have worked at least 1250 hours in the last 12 months are eligible to take up to 12 weeks of *unpaid* leave for family or medical reasons. In determining eligibility for leave, a "rolling" 12-month period is used, measuring backward during the previous 12 months from the date the leave is requested. **The law provides that an employee returning from leave will be reinstated to the same or an equivalent position upon return to work within the specified time period.** FMLA runs concurrently with any other approved leave (Worker's Compensation, Short-Term Disability, Paid Family Leave, etc.).

Enclosed is a Family Medical Leave Form to be completed by you and your Branch Manager. Also enclosed is a Certification of Health Care Provider for Employee's Serious Health Condition and a Short Term Disability form (STD), for you and your physician to complete. Unlimited Care, Inc.'s STD plan is administered by New York State Insurance Fund (NYSIF).

When you return from family and medical leave, you must bring a physician's note enabling you to return to work. If you do not return after your leave has expired (and have not received approval for continuation of leave), you may be considered to have voluntarily resigned.

If you have any questions, please do not hesitate to contact me at (914) 428-4300 ext. 1821.

Sincerely yours,



Jolene Ritter
Human Resource Specialist

**NYC
HEALTH+
HOSPITALS**

Bellevue

February 15, 2023

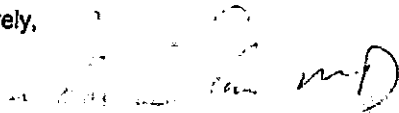
Patient: **Fatoumata Diallo**
Date of Birth: **2/27/1980**
Date of Visit: **02/15/2023**

To Whom It May Concern:

Fatoumata Diallo was seen in my clinic on 02/15/2023. At this time, she is allowed to return to work without restrictions.

If you have any questions or concerns, please don't hesitate to call.

Sincerely,



Andrew L Sackrison, MD



Time off Request Form

Please present to the office 2 weeks prior to request

Employee's Name: Fatoumata Diallo Branch: Yonkers

Coordinators Name: Pat

LAST DAY of work:

Dates requested: from 11/10/22 to RTW: 12/06/22

Reason: Undergoing fertility treatment (IVF) procedure

Your Patients Name(s):

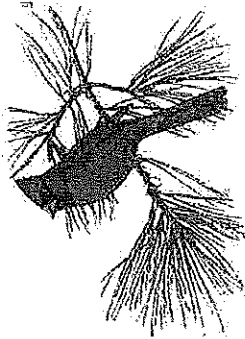
Joseph powers

Florica Ghedutescu

Your Signature: [Signature] Date: 10/28/22

Branch Approval: _____ Date _____

PLEASE CONTACT YOUR COORDINATOR TO VERIFY



U.S. Marshals Service
Civil Section
500 Pearl Street, Suite 400
New York, NY 10007

U.S. Department of Justice
U.S. Marshals Service
500 Pearl Street, Suite 400
New York, NY 10007

Exhibit B